In my view, in the circumstances of this case, where no hardship or injustice would have been caused to the plaintiff by holding that the Limitation Ordinance, 1959 had retrospective effect, the learned judge should have so held.

Section 18 of the Limitation Ordinance, 1959 provides as follows:—

"Subject to the provisions of section 12 of this Ordinance, at the determination of the period limited by this Ordinance to any person for bringing an action to recover land the right and title of such person to the land for the recovery whereof such action might have been brought within such period, shall be extinguished."

Applying section 18 to the facts of this case, the learned judge should have also held that the right and title of the plaintiff to the said hereditaments are extinguished.

For the foregoing reasons, the appeal is allowed with costs here and in the court below and the judgment of the court below set aside. There will be a declaration that the right and title of the plaintiff to the said hereditaments are extinguished.

Chua and **Ambrose JJ.** concurred.

Appeal allowed.

Solicitors: *Oehlers & Choa; Wee Swee Teow & Co.*

WAH TAT BANK LTD. & ORS. v. CHAN CHENG KUM & ORS.

[F.C. (Wee Chong Jin C.J., Tan Ah Tah F.J. & Chua J.) July 7, 1967]

[Singapore — Federal Court Civil Appeal No. Y. 2 of 1966]

Shipping — Carriers — Mate's receipts — Custom of trade between Sarawak and Singapore — Characteristics compared to bills of lading.

Mercantile law — Custom of trade — Shipping — Mate's receipt — Liability upon.

The appellants in this appeal were two banks, one in Sarawak and the other in Singapore. The 2nd appellants were at all material times the agents in Singapore of the 1st appellants. Tiang Seng Chan (Singapore) Ltd. were a trading firm having their head office in Singapore and a branch office in Sibu which did the buying of goods in Sarawak and exporting the same to Singapore. They had as their principal bankers the 1st appellants who regularly afforded overdraft facilities and financed shipments of the goods to Singapore against bills of exchange and notes in favour of the 2nd appellants. The arrangement contemplated was that such shipments consigned to the 2nd appellants would be treated as being under a contract of intended pledge to the 1st appellants as security for financing of these shipments for the said Tiang Seng Chan (Singapore) Ltd. The bulk of Tiang Seng Chan (Singapore) Ltd.'s exports from Sibu to Singapore were carried in two vessels, "Hua Heng" and "Hua Li" owned by the 1st respondents and chartered or booked for freight by the 2nd respondents. During 1961 four consignments of rubber estimated at $600,000 were delivered by the 2nd respondents on board the two vessels for carriage to Singapore and twenty "mate's receipts" which named 2nd appellants as consignees were issued to Tiang Seng Chan (Singapore) Ltd. as shippers. No bills of lading were issued in respect of these consignments but the mate's receipts were held by the 2nd appellants. On arrival at Singapore all the goods covered by these mate's receipts were released by the 2nd respondents to Tiang Seng Chan (Singapore) Ltd. without production or surrender of the mate's receipts but merely upon indemnities signed by Tiang Seng Chan (Singapore) Ltd. and three of its directors. Tiang Seng Chan (Singapore) Ltd. however, were unable to meet their financial obligations to the appellants incurred by the shipments. The appellants, therefore commenced this action for damages for wrongful conversion against the respondents for the four said consignments. The respondents in turn joined Tiang Seng Chan (Singapore) Ltd. and the signing directors as third parties.

The trial judge found against the appellants on the issues of custom and estoppel so that the mate's receipts were not equivalent to documents of title to the goods in the same way as is established for bills of lading and dismissed the claim. On appeal by the plaintiffs:—

Held: (1) it is a customs of the trade relating to shipment of goods between Sarawak and Singapore that mate's receipts are treated as documents of title in the same way as bills of lading;

(2) by reason of such custom of trade being established the issue of mate's receipts to order of the 2nd appellants estops the respondents from denying the 2nd appellants' right to possession of the goods thereby making the 2nd respondents liable for wrongful conversion by their act of making delivery to the third parties;

(3) retrial was ordered of the disputed issue whether or not the 1st respondent was also liable for wrongful conversion since he was merely owner of the vessels which he claimed were under bareboat charterparty at all material times.

Cases referred to:—

(1) *Lickbarrow* v. *Mason* 101 E.R. 380.

(2) *Goodwin* v. *Robarts* 10 Ex. Cases 337 at 352.

(3) *Bettany* v. *Eastern Morning Hull News Co. Ltd.* 16 T.L.R. 401.

(4) *Knights* v. *Wiffen* (1870), 5 L.R. Q.B. 600.

(5) *Bryans* v. *Nix* 150 E.R. 1634.

(6) *Evans & Evans* v. *Nichol & Nichol* 133 E.R. 1286.

(7) *Official Assignee of Madras* v. *Mercantile Bank of India Ltd.* [1935] A.C. 53.

FEDERAL COURT.

R. E. Kerr, Q.C. (*M. Karthigesu* with him) for the appellants.

R. A. MacCrindle, Q.C. (*C. H. Smith* with him) for the respondents.

Cur. Adv. Vult.

Wee Chong Jin C.J.: The appellants in this appeal are two banks, one in Sarawak and the other in Singapore. The Singapore bank, The Oversea-Chinese Banking Corporation Ltd., are the second appellants, and were at all material times the Singapore agents of the Sarawak bank, Wah Tat Bank Ltd., the first appellants. The first respondent, Chan Cheng Kum was at all material times the owner of two motor vessels "Hua Heng" and "Hua Li" plying between

Singapore and Sarawak ports. The second respondents, Hua Siang Shipping Company Ltd. were alleged to be at all material times the charterers of the "Hua Heng" and the "Hua Li" or alternatively persons who had booked space therein.

The appellants sued the respondents in the High Court of Singapore for damages for wrongful conversion of rubber carried on the vessels "Hua Heng" and "Hua Li" on four voyages between May and June 1961 from Sibu, a port in Sarawak to Singapore. The material facts relating to these four shipments of rubber and which facts were never in dispute are briefly these.

The shippers of all the four consignments of rubber were a company, Tiang Seng Chan (Singapore) Ltd. which had its head office in Singapore and a branch office in Sibu. This company had over a substantial period of years bought produce in Sibu for export to Singapore. At the material times there were three regular shipping lines operating between Sarawak ports and Singapore and *vice versa*, of which the second respondents were one, the other two being Sarawak Steamship Co. Ltd. and the Singapore Red Funnel Lines. The bulk of Tian Seng Chan (Singapore) Ltd.'s exports from Sibu to Singapore were carried on vessels operated by the respondents.

The four consignments of rubber in question, of the estimated value of $600,000, were delivered by Tiang Seng Chan (Singapore) Ltd. to the second respondents at Sibu for carriage on board the vessels "Hua Li" and "Hua Heng" to Singapore. Twenty receipts entitled "mate's receipt", which acknowledged receipt of these four consignments in apparent good order and condition for shipment to Singapore and named the second appellants as consignees, were issued to Tiang Seng Chan (Singapore) Ltd. by or on behalf of the second respondents. These receipts were signed by the chief officer of one or other of the two vessels. No bills of lading were issued in respect of these four consignments.

Tiang Seng Chan (Singapore) Ltd.'s principal bankers at Sibu were the first appellants with whom they had overdraft facilities and over the years, by means of such overdraft facilities, the first appellants financed shipments of the goods of Tiang Seng Chan (Singapore) Ltd. for carriage to Singapore against the latter's bills of exchange and/or notes in favour of the second appellants and against "mate's receipts" on condition that the goods so carried were consigned to the second appellants as agents for the first appellants and with the intention that such goods would be pledged or treated as having been pledged to the first appellants as security for the said financing by the first appellants of such shipments.

The four consignments in question were so financed by the first appellants and the twenty "mate's receipts" were duly delivered by Tiang Seng Chan (Singapore) Ltd. to the first appellants who sent them on to their Singapore agents, the second appellants, together with bills of exchange or notes drawn on Tiang Seng Chan (Singapore) Ltd. and payable to the order of the second appellants.

While these twenty mate's receipts were held by the second appellants, all the goods covered by these mate's receipts were released by the second respondents to Tiang Seng Chan (Singapore) Ltd. shortly after the arrival of the vessels at Singapore without production of and surrender of the relevant mate's receipts and only against indemnities signed by Tiang Seng Chan (Singapore) Ltd. and three of its directors. These indemnities were not bank guarantees in the sense that they were not countersigned by a bank.

Unfortunately Tiang Seng Chan (Singapore) Ltd. were unable to meet their obligations and as a consequence the appellants commenced this action against the respondents, who joined as third parties Tiang Seng Chan (Singapore) Ltd. and its three directors who signed the indemnities.

Had these twenty mate's receipts been bills of lading the transactions we are concerned with here would have been similar to thousands of other transactions daily carried on all over the world and this case would have been no different from the cases that have so often been dealt with by the courts. But it is urged upon us by the appellants that the result should be the same for the mate's receipts we are concerned with are in every respect, except the heading, bills of lading. It is said the Sarawak-Singapore trade uses the mate's receipts in exactly the same way as international trade uses the bills of lading and that this has been so for forty years.

They thus put their case at the trial in this way namely, that by the custom (usage) of the trade relating to the shipment of goods by sea between Sarawak and Singapore and Singapore and Sarawak, mate's receipts (such as those to which the action relates) are treated as documents of title to the goods thereby covered, in the same way as bills of lading.

In the alternative, they say that by reason of the usage and practice of the trade relating to the shipment of goods by sea between Sarawak and Singapore (and *vice versa*), the respondents, by issuing these mate's receipts which consign the goods to the order of the second appellants, represent to the second appellants that they hold the goods to their order and are estopped from denying their right to the possession of the goods.

In the further alternative, they say that once the respondents had issued mate's receipts in the form in which they were issued and once the shippers Tiang Seng Chan (Singapore) Ltd. had unconditionally appropriated the goods referred to in these mate's receipts to a contract of intended pledge between the shippers and the first appellants, the shippers lost any right to give to the respondents instructions to deliver the goods to themselves or to any one else, so that the delivery of the goods to the shippers in these circumstances constituted a wrongful conversion both by the shippers and the respondents.

There was a further issue at the trial as the shipowners had denied liability on the ground that both vessels were the subject matter of an oral bareboat charterparty at all material times. The appellants disputed the existence of the alleged bareboat charterparty and also claimed that in any event the first respondent was liable as he was personally concerned with the release of the goods to Tiang Seng Chan (Singapore) Ltd. on the indemnities. The further issue therefore was, if the appellants are entitled to damages for wrongful conversion, which of the respondents are liable, or are both liable.

As was to be expected on the issues raised, the trial was a long and protracted one occupying thirty four hearing days spread over a few months and a great deal of evidence was given on the issues relating to custom, estoppel and on whom the liability, if so found, would fall. At the conclusion of the hearing the trial judge reserved judgment and some months later delivered judgment dismissing the action.

On the first issue, the issue of custom, the trial judge held that a document of title could only come into existence as a result of a universal custom or by legislation and that as the appellants case was merely that a local trade custom had grown up which was applicable to everyone engaged in the trade relating to the shipment of goods by sea between Sarawak and Singapore and Singapore and Sarawak to the effect that mate's receipts (such as those to which the action relates) are treated as documents of title to the goods thereby covered, in the same way as bills of lading, the appellants' case on custom must necessarily fail.

The trial judge made no findings of fact on this issue though a considerable number of witnesses were called to prove the existence or non-existence of the alleged custom or usage of the trade.

On the second issue, the issue of estoppel, the trial judge found that the respondents had in no way attorned to the appellants so as to make the respondents liable. He held that in order to constitute an attornment by the respondents in favour of one or other of the appellants, "there must be a clear understanding between the defendants (respondents) and the first and second plaintiffs (appellants) or either of them that the defendants would be holding the goods for them". He did find however that "all the parties in this action knew what was going on" but in his opinion "as far as this case is concerned it does not matter what the defendants (respondents) knew". The trial judge would appear therefore to have considered the appellants' case on estoppel not made out because they had failed to make out their case on custom.

The trial judge did not deal with the third issue at all and on the fourth issue he held it was unnecessary to decide it.

The questions to be decided in this appeal are, first, whether or not there was at all material times a custom (usage) of the trade relating to the shipment of goods by sea between Sarawak and Singapore and Singapore and Sarawak and effective in law that mate's receipts are treated as documents of title to the goods thereby covered, in the same way as bills of lading; secondly, whether or not the respondents are estopped by reason of the usage and practice of the trade from denying the appellants' right to the possession of the goods; thirdly, whether or not the delivery of the goods to the shippers by the respondents amounted to a wrongful conversion once the respondents had issued mate's receipts covering these goods in the form in which they were issued and once the shippers had unconditionally appropriated these goods to a contract of intended pledge between them and the first appellants. Both the appellants and the respondents are agreed that the fourth issue namely on whom should the liability, if proved, fall could not be properly dealt with in this appeal as its determination depended almost entirely on the credibility of the witnesses who gave evidence relevant to this issue.

With this brief introduction I now deal with the first question. Mr. Kerr for the appellants contends that the trial judge was wrong in deciding that a local or trade custom, however strong, whereby mate's receipts are treated as documents of title can never be effective in law, because such a custom requires "universal application" i.e. applicable all over the world. He submits that the trial judge was led into this error by a misconception as between negotiable instruments on the one hand and documents of title to goods on the other hand and that the true position is that over the decades going back to 120 years or so a number of documents have achieved the status of documents of title to goods as a result of local or trade usage, or have failed to achieve that status because the alleged local or trade usage (custom) was not proved to the satisfaction of the court. In each case the question is one of fact, whether customs has been proved or not, although with increasing

standardisation and modernisation, the point has become rare in modern times.

The confusion, he submits, has arisen because of three things namely:—

(1) The difference between documents of title to goods and negotiable instruments;

(2) The special historical position of the bill of lading because it has been recognised by statute as a quasi-negotiable instrument in that the Bill of Lading Act 1855 provides that endorsement or naming of the consignee in the bill of lading was capable of transferring contractual rights but did not provide that a *bona fide* transferee could get a better title than the transferor had; and

(3) The law merchant, which is a kind of collection of customs which are universal; the only difference between the law merchant and other customs being that the court takes judicial notice of customs which are customs by the law merchant whereas local custom must be proved by evidence. A local or trade custom may after a while become so internationalised and so widely recognised and established in the courts that the courts will take judicial notice of it and then it can be said that it has become part of the law merchant. At one stage this was the position of the bill of lading.

As regards (1) namely, the difference between documents of title to goods and negotiable instruments, Mr. Kerr says the former are those documents which, by the custom of any trade or locality or by the law merchant or by statute, represent goods so that the transfer of the documents operates as a symbolic delivery of the goods if the intention is to pass the general or special property in the goods, whereas the latter are those documents, the transfer of which, by the law merchant or by statute, first, is capable of transferring contractual rights and secondly, enables the holder in good faith to obtain better rights than his transferor had. As regards a document of title to goods, it can exist at common law but a negotiable instrument can only exist at common law in so far the common law adopts and recognises the law merchant because at common law a transfer of a document cannot transfer contractual rights except by novation of assignment and because at common law a holder in good faith cannot obtain better rights than his transferor had unless the transfer took place in market overt.

As regards (2) namely, the special historical position of the bill of lading, he says that over the centuries by the general acceptance of merchants all over the world, it had become a document of title to goods but it was not until 1855 by statute, namely the Bill of Lading Act 1855 that it became a quasi-negotiable instrument in that it acquired the first characteristic of a negotiable instrument namely, its transfer operated as a transfer of contractual right i.e. the holder acquires contractual rights against the carrier. A bill of lading is accepted by the courts as a document of title to goods because of the universal custom of merchants without proof being required of this custom whereas for other documents to be documents of title to goods the courts will require proof of the alleged trade or local custom to that effect. Mr. Kerr submits that although internationally the only document of title is the bill of lading, there is no reason in principle why in local trade other documents may not by virtue of a local or trade custom be similar to bills of lading and have one of the characteristics of a true bill of lading namely, being a document of title to goods the transfer of which would amount to a transfer of the goods.

He says that the mate's receipts in the present case, except for their heading "Mate's Receipts" have all the three characteristics of a bill of lading namely (a) a receipt for the goods; (b) a document of title to the goods; and (c) evidence of a contract of carriage of goods. In so far as the second of these three characteristics are concerned the mate's receipts are documents of title if he can prove to the the satisfaction of the court that by the custom of the trade relating to the shipment of goods between Sarawak ports and Singapore mate's receipts such as those to which the action relates are treated as documents of title to the goods thereby covered, in the same way as bills of lading.

It is not in dispute that there is a difference between a document of title to goods and a negotiable instrument or a quasi-negotiable instrument but it is disputed that a mere local or trade custom not universally recognised can change a document which is not a document of title to goods at common law into one which is.

The first issue to be decided therefore is whether a trade custom not universally adopted can create a document of title to goods. Mr. Kerr submits that in principle there is no reason why a trade custom should not create a document of title to goods and that there is nothing unreasonable or inconvenient in holding that it can do so. He also submits that no authority can be cited which says it cannot and that there are indeed a number of cases which could or should not have been dealt with in the way they were dealt with unless the submission is right. Mr. MacCrindle, counsel for the respondents, on the other hand says that there is no authority in English Law which says a document of title to goods can be created by a trade custom. He submits it would be contrary to one of the principles of the common law, that to create a pledge in law there must have been a transfer of possession in law of the subject matter of

the pledge. In other words there must be delivery which must be — apart from constructive delivery where goods are in the possession of a bailee and where the goods are covered by a bill of lading — actual delivery of the goods. In the present case however solemn the agreement is between all those who participate in the trade the transfer of mere bits of paper can never under the common law amount to the transfer of possession of the goods referred to therein. Mr. MacCrindle therefore submits that the alleged custom, similarly cannot have the effect in law of a transfer of possession of the goods because that would be a circumvention of the common law which requires transfer of possession to create a pledge.

Numerous cases were cited by both counsel in support of their respective contentions but as none of them deal expressly with this point in issue I do not propose to attempt to show their relevance, usefulness or otherwise to this point I have to decide.

In my opinion Mr. Kerr is right that in principle there is no reason why a trade custom should not create a document of title to goods so that the transfer of the document operates to pass the property in the goods which it was the intention of the transferor to pass. I apprehend that in the case of the bill of lading at one period of time its transfer did not operate in law as a transfer of possession of the goods. I further apprehend that for purposes of convenience and to facilitate and expand trade, merchants began to accept and to honour among themselves this characteristic and this in course of time became so widely accepted and honoured among merchants as to become customary among them. I apprehend again that there must have been many occasions when some merchants refused to honour this trade usage and the question then came before the courts to decide whether a bill of lading had this particular characteristic and if so was it a characteristic the law would give effect to.

I apprehend again that whenever such a question came before the courts the alleged trade usage had to be proved and as it had in fact been customary among merchants, this trade usage was easily found proved and it was not until the case of *Lickbarrow* v. *Mason* [1] which was finally decided in 1794 that thereafter the courts took judicial notice of this custom or trade usage so that thereafter no evidence was necessary to prove it and this custom or trade usage, having been adopted as settled law by the courts, became part of the law merchants.

I have endeavoured to show that this usage or custom relating to bills of lading is the foundation on which the transfer of a bill of lading is effective in law to transfer the property in the goods and this usage or custom as found by a jury is set out in *Lickbarrow* v. *Mason* at p. 382 as follows:—

> "And then the jury found that, by the custom of merchants, bills of lading, expressing goods or merchandizes to have been shipped by any person or persons to be delivered to order or assigns, have been, and are at any time after such goods have been shipped, and before the voyage performed, for which they have been or are shipped, negotiable and transferable by the shipper or shippers of such goods to any other person or persons, by such shipper or shippers indorsing such bills of lading with his, her or their name or names, and delivering or transmitting the same so indorsed, or causing the same to be so delivered or transmitted to such other person or persons; and that by such indorsement and delivery, or transmission, the property in such goods hath been, and is transferred and passed to such other person or persons. . . ."

The effect of this usage or custom in relation to the common law is thus described by Cockburn C.J. in *Goodwin* v. *Robarts* [2] at p. 352:—

> ". . . bills of lading may also be referred to as an instance of how general mercantile usage may give effect to a writing which without it would not have had that effect at common law. It is from mercantile usage, as proved in evidence, and ratified by judicial decision in the great case of *Lickbarrow* v. *Mason*, that the efficacy of bills of lading to pass the property in goods is derived."

The bill of lading is thus, in my opinion, one example and one pertinent to the present case, of how by "the custom of merchants" — which are the exact words in *Lickbarrow* v. *Mason* — a particular effect is given to a document which without it would not have had that effect at common law. If by so doing the result is one which is incompatible with the common law as it then was, then notwithstanding such a result the courts of that period at first, on proof of the "custom of merchants", and later, by taking judicial notice of it, have consistently given legal effect to the custom.

In any event a document of title to goods can and does exist at common law and all that the custom pertaining to a bill of lading is doing, in my opinion, is to accept a document, which prior to the custom is not a document of title to goods, as a document which is a document of title to goods. The custom merely attaches that character to a bill of lading and the common law then takes over and decrees what legal consequences follow from it being a document of title to goods.

I therefore see no reason in principle, and indeed the case of the bill of lading indicates otherwise, why a local trade usage or custom cannot create a document of title to goods.

Having so decided, I now have to decide whether on the evidence the appellants have proved the custom (usage) they rely on. I might have felt disinclined, sitting on an appellate court, to attempt to do so except that counsel for both parties are agreed that all the

available evidence appears in the record, that the credibility of the witnesses who gave evidence on the usage is involved to only a very small extent and that in all the circumstances of the case, none of the parties would suffer any injustice if this court should deal with this issue of fact.

The evidence reveals that historically this particular trade by ocean going vessels was originally carried on before 1927 by only one shipping concern known as the Sarawak Steamship Co. In 1927 another shipping company called Soon Bee Co. started to operate vessels between Sibu, a port in Sarawak, and Singapore until 1931 when it was bought over by the Sarawak Steamship Co. From then on the Sarawak Steamship Co. was alone in the trade until about 1951 when Hua Siang Shipping Co. started business. Soon after, another shipping concern, Heap Eng Moh Shipping Co. came into the trade and a short while later joined in with yet another shipping concern to carry on in this trade under the name or style of Red Funnel Line.

At the material times, the main lines that operated vessels between Sarawak and Singapore and *vice versa* were the Sarawak Steamship Co., the Red Funnel Line, and the Hua Siang Shipping Co. Ltd. which were the successors of Hua Siang Shipping Co.

From before 1927 the trade between Sarawak and Singapore had been carried on the basis of the mate's receipt being the only shipping document issued by the carrier. The undisputed evidence is that in very rare instances only were bills of lading issued. With regard to the trade between Singapore and Sarawak in twenty-five per cent of the cases, bills of lading were issued and the reason for this was that where goods were shipped from Singapore to Sarawak, a fair proportion of European firms were involved in these shipments and as a matter of normal practice they required the issue of bills of lading so as to have copies for filing purposes. All the witnesses are however agreed that they have never known of an instance where there was a mate's receipt and a bill of lading issued and outstanding at the same time in respect of a particular shipment and that the carrier, if a bill of lading is requested, would only issue it on surrender of the relevant mate's receipt.

In this particular trade, no carrier would give delivery of goods carried under mate's receipts save on production of the relevant mate's receipt or against an indemnity and where the carrier has delivered goods against an indemnity, then he will not release the indemnity except againt the surrender to him of the relevant mate's receipt.

Again, in this trade it was the regular practice to consign goods covered by mate's receipts, only to the order of a person. The order would be either to the order of the shipper or to the order of a consignee other than the shipper. If, however, there was no intention on his part to transfer the property, general or special, in the goods whilst afloat, the shipper would not ask the carrier to make the mate's receipt deliverable to order but "to selves" i.e. to shipper.

Next, in this trade it was the regular practice of banks to advance money on the security of mate's receipts in exactly the same way as if they were bills of lading and when they did so, the bank or its correspondent at the port of destination would, in the mate's receipt, be the named consignee to whose order the goods were consigned. It was known to all engaged in this trade that if one saw in a mate's receipt the words "Consigned to the order of" a named bank, one knew that the goods were pledged to that named bank.

There was also a practice among banks in this trade to convert the mate's receipts to trust receipts or letters of hypothecation. This practice was indulged in where a bank holds the mate's receipt and the owner of the goods wants to take delivery from the carrier. The bank would in such cases hand over the mate's receipt to the owner in exchange for a trust receipt executed by the owner whereby the goods are charged to the bank together with the proceeds of sale.

Again, there was also a practice of endorsing mate's receipts issued in this trade in the same way as bills of lading are endorsed in the international shipping trade.

Finally there have been instances where carriers in this trade have accepted liability to the holder of a mate's receipt on the same basis as his liability to the holder of a bill of lading.

Mr. Kerr, on all this evidence, which I see no reason not to accept, submits that he has sufficiently proved the existence of the local trade usage (custom) at least so far as the trade between Sarawak ports and Singapore is concerned. Mr. MacCrindle on the other hand submits that this evidence is insufficient to prove the alleged local trade custom because before the courts will find a custom proved, it must be clearly shown that the alleged custom is universally acquiesced in or adopted by the relevant class of persons habitually engaged in the particular trade and in this case the fact that some people in the trade do ask for bills of lading shows that some people do think that it is better and safer to get a bill of lading and do not treat a mate's receipt as a document of title.

The undisputed evidence, so far as the trade between Sarawak ports and Singapore is concerned, is that it was very rarely that bills of lading were issued and no evidence was called

to show in those instances why they were issued and I am of the opinion that these rare exceptions are not such as to disentitle one from coming to the conclusion that mate's receipts were universally adopted by all those in the trade between Sarawak ports and Singapore as documents of title, in the same way as bills of lading. The evidence relating to these rare exceptions was given by a witness who was the manager of a company which became the Sarawak agents of the Hua Siang Shipping Co. in June 1961 and whose shipping experience dated from April 1960. He was not concerned with local trade until the company which employed him became agents of Hua Siang Shipping Co. and he readily admits he is unable to produce any bill of lading relating to cargo carried from Sarawak to Singapore, nor had he seen a bill of lading during the period April 1960 to June 1961 in respect of local cargo from Sarawak to Singapore.

I would hesitate long before accepting the evidence of this not disinterested witness as sufficiently cogent as against the evidence of other witnesses, whose impartiality is beyond doubt, that the trade treated mate's receipts as documents of title in the same way as bills of lading.

Mr. MacCrindle also submits that the most satisfactory way to prove the alleged custom is to show an established course of business, at first contested but ultimately acquiesced in (see *Bettany* v. *Eastern Morning Hull News Co. Ltd.*[3] and this the appellants had failed to do. In my opinion while it may be one way to prove the custom it does not necessarily follow that unless a plaintiff produces such evidence he can never succeed in proving a custom.

Mr. MacCrindle also submits that because the documents are all plainly marked "Mate's Receipt" which is a classic document known the world over in contra distinction to the bill of lading and that they are all marked "Not Negotiable" must lead one to the obvious conclusion that the mate's receipts in this trade are, like mate's receipts in the international trade, to be distinguished from bills of lading which alone are documents of title and are negotiable and confer on the transferee a title to the goods. The answer, in my opinion, to the point raised as to the heading "Mate's Receipt" is that a document so headed is both a mate s receipt in the sense that it is a receipt issued by the carrier to the shipper evidencing delivery to the carrier by the shipper of the goods described therein, and at the same time, by the usage and practice of the trade, treated as similar to a bill of lading.

The other point raised by Mr. MacCrindle is that because of the words "Not Negotiable" which are printed in these mate's receipts and which must be given their ordinary meaning, any attempt to prove custom must fail on the ground of unreasonableness. He says that for a usage to amount to a custom binding on the trade it must be shown that it is reasonable and it would he submits be clearly unreasonable for a usage which seeks to vest in the holder of a document rights which the document itself provides is not transferable. I find however on the evidence that everybody connected with this trade has ignored these printed words.

I am accordingly of the opinion that the appellants have proved that it is a custom of the trade relating to shipment of goods between Sarawak ports and Singapore that mate's receipts such as those to which this present action relates are treated as documents of title to the goods thereby covered, in the same way as bills of lading.

The next question to be considered is whether or not by reason of the usage and practice of the trade relating to the shipment of goods by sea between Sarawak and Singapore, the respondents by issuing the mate's receipts in question which consign the goods to the order of the second appellants, represent to the second appellants that they hold the goods to their order and are estopped from denying their right to the possession of the goods. If the respondents are so estopped then they are liable to the appellants for wrongful conversion of those goods.

I will proceed to deal with this issue of estoppel by first accepting as a correct statement of the law, the passage contained in paragraph 338 of *Halsbury's* Laws of England 3rd Ed. Vol. 15 at page 169 which runs thus:—

> "Estoppel by matter in pais. Where one has either by words or conduct made to another a representation of fact, either with knowledge of its falsehood or with the intention that it should be acted upon, or has so conducted himself that another would, as a reasonable man, understand that a certain representation of fact was intended to be acted on, and that the other has acted on the representation and thereby altered his position to his prejudice, an estoppel arises against the party who made the representation, and he is not allowed to aver that the fact is otherwise than he represented it to be."

For the appellants to succeed on this issue they must first prove that each of the twenty mate's receipts contained a representation of fact by the carrier to them, the representation being that the carrier holds the goods covered by the mate's receipt to the order of the second appellants. The goods were not shipped by the second appellants and the mate's receipts were issued by the carriers and handed over to the shippers and not to the second appellants and the statement in the mate's receipts was "consigned to OCBC" or "consigned to OCBC order". The appellants contend however that where a bailee (in this case the carrier) who has received goods from A (in this case the shipper) for delivery to B (in this case OCBC) issues a document (in this case a mate's receipt) in circumstances in

which the bailee (carrier) knows that in the ordinary course of business the document (mate's receipt) is likely to be delivered by A (shipper) to B (OCBC) and relied upon by B (OCBC) and the document contains a statement which amounts to a representation, then the bailee must be held to have made the representation to B. I accept this contention and I find on the evidence that the course of dealings between the parties to this action over a long period of time has been such that the first respondents i.e. the carriers knew that in the ordinary course of business the mate's receipts we are concerned with would be delivered by the shippers i.e. the first third party Tiang Seng Chan (Singapore) Ltd. to the second appellants as Singapore agents of the first appellants via the first appellants.

Next the appellants must prove that the statement in the mate's receipts "consigned to OCBC" or "consigned to OCBC order" amounts to a representation that the carrier holds the goods to the order of OCBC. They contend they have established on the evidence that by the usage or practice of the trade relating to shipments of goods between Sarawak and Singapore, the recognised meaning of the statement in a mate's receipt "consigned to B" or "consigned to B's order" is that the carrier holds the goods to the order of B. Having come to the conclusion earlier on in this judgment that the appellants have on the evidence established a custom in this trade that mate's receipts are documents of title to the goods covered thereby in the same way as bills of lading it necessarily follows that I am of the opinion that on the evidence it is the usage and practice of this trade that where goods are stated in a mate's receipt to be "consigned to B" or "consigned to B's order", the carrier represents to B that he holds the goods to the order of B.

It is argued however by Mr. MacCrindle that even though it amounts to such a representation, there is still no representation that the carrier holds for B irrevocably but only amounts to a representation that the carrier holds the goods for B unless the shipper, on whose instructions alone the carrier acts, changes his mind and that in this present case the shipper has changed his mind and revoked his instructions by requiring delivery of the goods to himself. I am unable to accept this argument. There is no evidence whatsoever during the lengthy trial that the first third party (the shippers) ever gave any instructions to the first respondents (the carriers) not to hold to the order of OCBC but to deliver to them (the shippers) the goods covered by any of the twenty mate's receipts. Indeed, the fact that the shippers on taking delivery without production of the relevant mate's receipts, gave indemnities to the carriers indicates clearly that both the shippers and the carriers were well aware of and conducted their shipping transactions in accordance with the trade usage I have found established and furthermore that both knew that the appellants had an interest in the goods covered by these mate's receipts. That both were thus well aware is clearly brought to light by the evidence relating to the request by the first respondents to the shippers that two other directors of the shippers should personally sign the indemnities.

Next, on the evidence I find, and this is not seriously disputed before us, that the carriers knew that the second appellants would rely upon and act on the representation and that they did rely upon and act on the representation contained in all the twenty mate's receipts in question.

It follows therefore that in my judgment the carriers are estopped from denying the second appellant's right to the possession of the goods covered by these twenty mate's receipts.

Here again many cases were cited both here and in the court below but as none of them have been relied on as a direct authority I do not propose to refer to any of them. It is sufficient for me to say that while it is true that there have been very few reported cases where a plaintiff has succeeded in conversion on the basis of estoppel by representation the fact remains that the courts have never hesitated to so uphold a plaintiff's claim where the evidence establishes that there was a statement made by the defendant in such circumstances as to amount to a representation to the plaintiff that the defendant holds goods for the plaintiff and which the plaintiff as a reasonable man understood was intended to be acted or relied upon and accordingly acted or relied upon it so as to alter his position to his prejudice. One such instance is *Knights* v. *Wiffen* [4] where the representation was contained in a statement made by Wiffen, the defendant, to a third party, an agent of Knights, the plaintiff. In that case although in law the property in the goods had not passed in respect of a sale by Wiffen an unpaid vendor to one Maris, who had in turn sold a part of the goods to Knights and received payment therefor, as there had as yet been no appropriation from a larger quantity belonging to Wiffen, the court held that Wiffen was estopped, by reason of a statement to a third party which amounted to his telling Knights the plaintiff "I have sixty quarters of barley to Maris' order, I will hold it for you", from denying that the property had passed to the plaintiff. In his judgment Blackburn J. said (at page 664) :—

> "In the present case the plaintiff altered his position, relying on the defendant's conduct when the delivery order was presented. The plaintiff may well say, I abstained from active measures in consequence of your statement, and I am entitled to hold you precluded from denying that what you stated was true."

I now turn to deal with the second alternative way in which the appellants claim the res-

pondents are liable. The appellants' case is that once the respondents had issued mate's receipts in the form in which they were issued and once the shippers, Tiang Seng Chan (Singapore) Ltd. had unconditionally appropriated the goods referred to in these mate's receipts to a contract of intended pledge between the shipper and the first appellants, the shippers lost any right to give to the respondents instructions to deliver the goods to themselves or to anyone else, so that the delivery of the goods to the shippers in these circumstances constituted a wrongful conversion both by the shippers and the respondents.

The proposition of law relied on by Mr. Kerr for the appellants is that where a carrier issues a shipping document such as a mate's receipt to a shipper which makes the goods deliverable to a named consignee or to his order and the shipper transfers that document to the named consignee (or his principal) with the intention of transferring to him either the general or a special property in the goods covered by the document so as to appropriate those goods unconditionally to the contract between the shipper and consignee, then (a) the shipper has lost his right to revoke or otherwise disturb the appropriation which is final and (b) if the shipper and/or the carrier thereafter deal with the goods inconsistently with the rights of the consignee this is a wrongful conversion of the goods as against the consignee.

Mr. Kerr cites two cases which he submits are directly in point and are authorities in his favour. The first case is *Bryans* v. *Nix*.[5] The facts of that case in brief are these. Miles Tempany, a corn merchant at Longford, Ireland, trading under the style of Gethins and Tempany had been in the habit of consigning grain to the plaintiffs as his factors for sale in Liverpool and from time to time drawing bills of exchange upon them against such consignments. He was also in the habit of making similar consignments to the defendant, as his factor for sale in London, and from time to time drawing bills upon him in the same manner. These consignments were shipped from Longford in boats or barges by canal to Dublin where on their arrival they were unshipped and warehoused by Miles Tempany's brother John Tempany who managed the business of Gethins and Tempany there and who also superintended the re-shipment of them for their place of destination at Liverpool or London as the case may be, in vessels procured by the firm of John & Thomas Delany, who were the shipbrokers and agents of Tempany at Dublin.

On 31st January 1837 Miles Tempany shipped on board canal boat No. 604 a full cargo of oats, 480 barrels, and obtained from the master a document in the following terms:—

"Shipped in good order and condition, by Gethins and Tempany (in and upon the good ship called the) boat 604, whereof is master for this present voyage Thomas Murtagh, and now riding at anchor in the canal harbour. Longford, and bound for Dublin, 480 barrels of oats, marked and numbered as in the margin, and are to be delivered in like good order and condition, at the aforesaid port of Dublin (the danger of the seas, fire, rivers, and navigation of whatever nature and kind excepted unto Messrs. John and Thomas Delany, in care for and to be shipped Messrs. Bryans, Herd, & Co., Liverpool, (or to assigns, he or they paying freight for the said goods) with primage and average accustomed. In witness whereof, the master or purser of the said ship hath affirmed to three bills of lading, all of this tenor and date, one of which being accomplished, the other two to stand void. Dated in Longford, 31st day of January, 1837.

THOMAS MURTAGH."

On the same day, Miles Tempany obtained from the master of another canal boat No. 54 a similar document for 530 barrels, but no oats were then on board, although a cargo was being prepared for that purpose. On the 2nd February 1837 Miles Tempany wrote to the plaintiffs a letter enclosing both these documents together with a bill of exchange for £730 dated 1st February drawn on the plaintiffs. The letter and the documents were received on 4th February by the plaintiffs who accepted the bill of exchange and on 7th February returned it so accepted in a letter which Miles Tempany received on 9th February.

In the meantime the defendant, to whom Miles Tempany was indebted to a considerable amount, sent a Mr. Walker, an agent, to Longford. Walker arrived on the 6th February and pressed Miles Tempany for security as a result of which Miles Tempany on the same day gave him an order addressed to John Tempany, his brother and agent in Dublin, instructing John Tempany to deliver to Walker, for the defendant, the cargo for boat No. 604, which had then sailed for Dublin, and four other cargoes including that of boat No. 54 (which was stated to be 560 barrels). On the 6th February boat No. 54 was only partially loaded and the loading was completed on 9th February whereupon the master was induced by Miles Tempany to issue another document for the cargo, in the same terms as the former, except that it made the cargo deliverable to the defendant instead of to the plaintiffs. This latter document was transmitted to Walker who received it the next day at Dublin. Both boat No. 604 and boat No. 54 were hired by Miles Tempany and the boatmen paid by him. Walker having obtained an agreement by John Tempany in Dublin to hold the oats for him when they arrived afterwards got possession of both cargoes by legal process.

The plaintiffs sued the defendant in trover but the defendant contended that under all the circumstances the property in neither cargo vested in the plaintiffs; first, because the documents were not regular bills of lading and could give no title; and secondly, if they were, they could not operate to give the plaintiffs a title

because they, being factors, could acquire no lien without actual possession.

It was held that the property in the cargo on board boat No. 604 was in the plaintiffs but not the property in the cargo on board boat No. 54. Parke B. who delivered the opinion of the court said at page 1641:—

"We think it unnecessary to decide whether the instruments were regular bills of lading, so as to have all the properties which the custom of merchants has attached to those documents. We need not say, whether, like bills of lading, they are the symbols of property, so that their transfer by indorsement is equivalent to an actual delivery of the goods, which they represent, in specie; nor whether they have the privileges which by the factors' act are given to such instruments. These are matters wholly collateral to the present inquiry. The true question here is, what is the meaning and effect of the two documents, by whatever name they are called, coupled with the letter from Tempany, of the 2nd of February, followed by the acceptance by the plaintiffs of Tempany's draft? It seems to us to be clearly this, — that Tempany agrees that the oats therein specified, shall be held from that time by the boat-masters, for the plaintiffs, in their own right, provided they accept the bill, as a security for its payment — that the masters agree so to hold them, and that by the plaintiffs' assent and acceptance of the bill, the conditional agreement becomes absolute. The transaction is in effect the same, as if Tempany had deposited the goods with a stakeholder, who had assented to hold them, for the plaintiffs, in order to indemnify them. As evidence of such a transaction, it is wholly immaterial whether the instruments are bills of lading or not: and it might equally be proved through the medium of carriers' or wharfingers' receipts, or any other description of document, or by correspondence alone. If the intention of the parties to pass the property, whether absolute or special, in certain ascertained chattels, is established, and they are placed in the hands of a depositary, no matter whether such depositary be a common carrier, or ship-master, employed by the consignor, or a third person, and the chattels are so placed on account of the person who is to have that property; and the depositary assents; it is enough: and it matters not by what documents this is effected; nor is it material whether the person who is to have the property be a factor or not; for such an agreement may be made with a factor, as well as any other individual.

In the present case we are of opinion that this is satisfactorily made out, with respect to the first boatload: and the fact that the instrument signed by the master, specifies that the goods are to be carried to and delivered at Dublin, to an agent of the plaintiffs, is decisive to shew that the plaintiffs are to take immediately in their own right, and are not mere consignees of Tempany, who are to have their lien when the goods arrive, as factors. And this case is distinguishable, on this ground, from *Kinlock* v. *Craig*, *Bruce* v. *Wait* and *Nichols* v. *Clent*, in none of which was there any documentary or other evidence to prove that the intention of the consignors was to vest the property in the consignee from the moment of delivery to the carrier:".

The second case is *Evans and Evans* v. *Nichol and Nichol.*(6) In that case the plaintiffs sued in trover in respect of 50 hogshead of alkali. The plaintiffs were chemists and drysalters as well as factors and brokers carrying on business in London. They acted as factors and brokers for one Clapham, an alkali manufacturer at Newcastle, who was in the habit of consigning alkali to the plaintiffs in London for sale on his account, he being allowed to draw on them to the extent of two-thirds of their supposed value, but sometimes drawing, in fact, for the full amount. The defendants were the London agents of Nichol, Ludlow & Co. who carried on business at Newcastle as shipowners and wharfingers.

On 2nd May 1840 Clapham wrote to the plaintiffs that he had drawn on them at four months date for £500, adding

"I hope to be able to ship 20 tons of soda and alkali the beginning of the ensuing week per 'Hudgill'. I have not been able to send you any this week in consequence of the manufactory undergoing certain repairs". On the same day the bill of £500 was negotiated by Clapham. On 4th May the plaintiffs, upon receipt of the letter, replied to Clapham. The material portions of the reply were as follows: "We hand you account of sales for the past month . . . . the balance due to us (is) £1,671. 18. 9d. . . . . You are now drawing considerably above the value of the stock which we hold, either in the warehouse or by bills of lading. . . . . The bill presented today will be accepted. This is wholly beyond the value of your stock, and we shall be obliged by your forwarding goods without delay."

Clapham, through an agent, having arranged with the plaintiffs that 20 tons alkali and 20 tons soda would be sent to meet their last acceptance, on the 19th May sent 20 hogshead and two tierces of alkali to the defendants to be shipped in Clapham's name for London. A bill of lading having been prepared the defendants refused to sign it and refused to accept payment of the freight, claiming a general lien on the alkali to cover a debt owing to them by Clapham in respect of freight of former shipments made by Clapham on board their vessels.

In the meanwhile however, the keelman who had taken the alkali from Clapham's works and put it on board the defendants vessel, "London," had obtained from the mate of the "London" the following receipt:—

"Newcastle-upon-Tyne, 5 mo. 19th, 1840.
Received on board the 'London' the undermentioned goods from Anthony Clapham, to be delivered as below directed.

No. 467 to 488 E.

Twenty hogsheads and two tierces alkali, for Evans, Brothers.

London.

"William Robson, Mate."

On arrival of the vessel at London, the plaintiffs, to whom Clapham had forwarded the mate's receipt, requested delivery of the alkali but were referred by the captain of the vessel to the defendants, to whom the shipowner had directed him to deliver the alkali. The plaintiffs accordingly demanded from the defendants the alkali and at the same time tendered the freight. The defendants refused delivery and at the trial contended *inter alia* that the plaintiffs had not established possession in the goods. The trial judge held that as the alkali had, at the time of the shipment, been appropriated to the £500 bill, the property in the goods was

vested in the plaintiffs and entered a verdict for the value of the alkali, leave being reserved to the defendants to move to enter a nonsuit.

A rule *nisi* having been granted upon the application of the defendants, the case came before a court comprising Tindal C.J., Coltman J. and Maule J. The plaintiffs, having to show cause, relied upon the fact of there being a specific appropriation of the alkali, at the time of the shipment, to the payment of their acceptance. The defendants contended on the other hand that the goods, whilst on the voyage were under the disposition of the consignor and were at his risk and that the intention of the consignor to allow the proceeds of the alkali to be applied in part payment of the acceptance for £500 was not, of itself, sufficient to pass the property in the alkali.

The court discharged the rule *nisi* being of the opinion that the plaintiffs were entitled to retain their verdict. Tindal C.J. in his judgment said at page 1289:—

> "Here, the bill was accepted before the alkali was shipped; and it appears to me that the consignor not having manifested any intention to alter the destination of the goods, the defendants are estopped, by the receipt signed by their agent, from disputing the title of the plaintiffs to have the goods delivered to them agreeably to the terms of that receipt."

Coltman J. in his judgment said at page 1289:—

> "Here, the consignor has not attempted to disturb the specific appropriation made by him, of this alkali, to the plaintiffs. The parties contesting this appropriation are strangers. They are mere wrongdoers; and against them, slight evidence of property is sufficient."

Maule J. in his judgment, said at page 1289:—

> "Upon the shipment of the goods on board the 'London', upon the terms of being delivered to the plaintiffs, and the acceptance of the goods by the ship-owners upon those terms, the property vested in the plaintiffs to the extent of their interest, which was — the interest of persons with whom goods are pledged; *Bryans* v. *Nix*. It is admitted that if the plaintiffs had been vendees, instead of pawnees, of these goods, their right to recover could not have been disputed. The goods having been shipped by Clapham for the purpose of meeting the plaintiffs' acceptance of the £500 bill, and the ship-owners having accepted those goods for the purpose of delivering them to the plaintiffs, it appears to me that the plaintiffs acquired such a property and right of possession as to entitle them to maintain trover against the defendants."

I have dealt with these two cases at length because, on the facts of the present case, these cases are in my judgment directly applicable to the present case. It seems to me that the material facts in *Evans* v. *Nichol* so closely resemble the material facts in the present case as to make them indistinguishable. Mr. MacCrindle has not attempted to show that *Evans* v. *Nichol* has been subsequently overruled or held to have been wrongly decided. As I understand his argument on the point I am now dealing with he contends that when the two cases relied on by Mr. Kerr were decided the notion of pledge had as yet not been fully developed. His argument is that it is now settled law that a pledge could not be created at common law except by a delivery of possession of the thing pledged, either actual or constructive. There must be a change of possession, either by actual delivery of the thing pledged or by constructive delivery. Where goods were represented by documents the transfer of the documents did not change the possession of the goods save for one exception, which was the case of bills of lading the transfer of which by the law merchant operated as a transfer of the possession of, as well as the property in, the goods. In English law a pledge of the documents (except a bill of lading) is merely a pledge of the *ipsa corpora* of them and not in general to be deemed a pledge of the goods (see *Official Assignee of Madras* v. *Mercantile Bank of India Ltd.*[7] The appellants here sue in conversion, a tort, and to succeed they must show in this case that they have a special property in the goods and until they can show that possession of the goods, as distinct from the documents representing the goods, has been transferred to them in law, they have no special property in the goods to enable them to succeed in conversion. In this case the appellants have merely shown a transfer of possession of the documents representing the goods. The transfer of the documents did not change the possession of the goods, which remained in law in the shippers, the physical possession being in the carriers. The appellants had at most an equitable pledge and it is an indisputable principle of law that an equitable pledge is not sufficient to entitle pledgees to sue in conversion.

Be that as it may in *Evans* v. *Nichol* it was held that the plaintiffs had a sufficient property in the alkali shipped and covered by the mate's receipt in question to enable them to succeed in trover against the shipowners and similarly it was held in *Bryans* v. *Nix* that the plaintiffs had a title to the goods shipped in boat No. 604 and covered by the mate's receipt in question to enable them to succeed in trover against the defendants who having obtained delivery of them had refused the plaintiffs' demand for them. Similarly I would hold that in the present case the appellants are entitled to succeed in conversion against the carriers for having delivered them to the shippers.

For all these reasons, in my judgment, the appeal should be allowed with costs here and in the court below and the judgment of Kulasekaram J. set aside. The appellants are entitled to judgment against the second respondents for damages to be assessed. There should also be

an order for the re-trial of the issue whether or not the first respondent is also liable for damages for wrongful conversion.

Tan Ah Tah F.J. and **Chua J.** concurred.

Appeal allowed.

Solicitors: *Allen & Gledhill; Laycock & Ong.*

UNITED OVERSEAS BANK LTD. v. SIN BIAN SEA TRANSPORT

[O.C.J. (Ambrose J.) July 8, 1967]

[Singapore — Suit No. 973 of 1965]

Landlord and Tenant — Bankruptcy of tenant — Tenancy vesting in Official Assignee — Subletting — Licensees — Trespass — Claim to be tenants under oral assignment — Whether valid — Statute of Fraud, s. 3 — Control of Rent Ordinance (Cap. 242), ss. 26 & 27.

One Mathi was a monthly tenant of No. 6, Bonham Street, Singapore, (hereinafter called the said premises) from 1947. In 1958 Mathi was adjudicated a bankrupt and thereupon his contractual tenancy of the said premises vested in the Official Assignee. The plaintiffs bought the premises from the previous owners in May 1963. They then duly determined the Official Assignee's contractual tenancy on August 31, 1963 by a notice to quit and they subsequently obtained a declaration against the Official Assignee to that effect in June 1964 and a similar declaration and an order for possession against Mathi in February 1965. The plaintiffs then obtained possession of that part of the premises not occupied by the defendants and in this action they sought a declaration that the defendants were trespassers of that part of the premises occupied by them and an injunction restraining them from further occupying the said part.

The plaintiffs alleged that the defendants had been occupying that part of the premises since February 1960. The defendants pleaded that they became tenants of that part of the premises in or about 1947 when they were granted their tenancy by the Singapore Lighter Owners Association and have remained in occupation since and that they were statutory tenants under sections 26 and 27 of the Control of Rent Ordinance. Alternatively they alleged that the association orally assigned that part of the tenancy held by the association to them sometime in 1960.

Held: (1) the association became the sub-tenant of Mathi on September 27, 1947 in respect of that part of the premises more particularly indicated in the plan attached to the statement of claim;

(2) the defendants and the eleven others who shared that part of the premises did not have exclusive possession of the same in 1947 and they were therefore merely licensees of the association;

(3) the defendants did not become sub-tenants of the Official Assignee under the oral assignment of the association's sub-tenancy made by the association in or about 1960 because the oral assignment in this case was void under sections 3 and 4 of the Statute of Frauds. It followed therefore that the association which became the sub-tenant of the Official Assignee on September 19, 1958 on the vesting of Mathi's contractual tenancy in the Official Assignee, continued to be such sub-tenant even after the purported assignment of its sub-tenancy and the present defendants remained licensees of the association;

(4) accordingly the submission that the defendants had no right prior to February 20, 1960 to use the part of the premises occupied by them should be rejected and the claim for a declaration and injunction dismissed;

(5) the court was not in a position to adjudicate on the alternative claim for possession because the association was not a party to this action and as the premises was controlled premises.

Cases referred to:—

(1) *Khalik* v. *Thai Craft Ltd.* [1966] 2 M.L.J. 112, 114.

(2) *Botting* v. *Martin* (1808), 1 Camp. 317.

CIVIL SUIT.

K. S. Chung for the plaintiffs.

C. S. Wu for the defendants.

Cur. Adv. Vult.

Ambrose J.: In this action the plaintiffs claim a declaration that the defendants are trespassers of that part of the premises known as No. 6 Bonham Street, Singapore, which is at present occupied by the defendants, and an injunction restraining them from further occupying the said part. Alternatively the plaintiffs claim possession of the said part.

The following facts are not disputed. One V. Mathiaparanam, formerly trading as V. Mathi & Co., was a monthly tenant of the premises from 1947. I will call him Mathi. On the 19th September, 1958, Mathi was adjudicated a bankrupt and thereupon his contractual tenancy of the premises vested in the Official Assignee. The plaintiffs bought the premises from the previous owners on the 22nd May, 1963. They duly determined the Official Assignee's contractual tenancy on the 31st August, 1963, by a notice to quit dated the 31st July, 1963. In Suit No. 310 of 1964 they obtained a declaration against the Official Assignee to that effect on the 22nd June, 1964. In the same suit they obtained a similar declaration and an order for possession against Mathi on the 5th February, 1965. The present plaintiffs have obtained possession of that part of the premises which is not occupied by the present defendants.

It is alleged in the statement of claim that the defendants have been occupying since the 20th February, 1960, that part of the premises which is now occupied by them. The defendants plead that they first became tenants of that part of the premises in or about 1947 when they were granted their tenancy by the Singapore Lighter Owners' Association and have remained in occupation ever since. They further plead that at the commencement of their tenancy that part of the premises was occupied by the defendants with eleven other co-tenants, each contributing an agreed sum towards the monthly rental payable to the association. They go on to plead that in or about March, 1960, the defendants at the association's request agreed thereafter to